

## **ARTICLE 139 CLAIM**

### **1. What is an Article 139 Claim?**

An Article 139 Claim is a claim against a soldier who willfully damages or wrongfully takes another's property

### **2. Who may file an Article 139 Claim?**

Any individual (to include both civilians and service members), business entity, State or Local Government, or charity may submit a claim under Article 139.

### **3. Who may not file an Article 139 Claim?**

An APF or NAF entity of the United States may not file a claim under Article 139.

### **4. What is "willfully damage"?**

a. Willful damage is damage which is inflicted intentionally, knowingly, and purposefully without justifiable excuse.

b. Damage, loss, or destruction of property caused by riotous, violent, or disorderly acts, or by acts of depredation, or through conduct showing reckless or wanton disregard of the property rights of others may be considered willful damage.

c. Willful damage is not damage that is caused thoughtlessly or inadvertently through simple or gross negligence.

### **5. What is "wrongful taking"?**

a. A wrongful taking is any unauthorized taking or withholding of property, with the intent to temporarily or permanently deprive the owner or person lawfully in possession of the property. This does not include situations involving the breach of fiduciary or contractual relationship.

b. Damage, loss, or destruction of property through larceny, forgery, embezzlement, fraud, misappropriation, or similar offense may be considered wrongful taking.

c. Wrongful taking is not a taking involving a dispute over the conduct of a soldier acting as the claimant's agent, over the terms of a contract, or over ownership of property.

**6. What is the time limit on submitting a claim?**

- a. A claim must be submitted within 90 days of the incident that give rise to it.
- b. If good cause is shown for not submitting the claim within 90 days, the Special Court-Martial Convening Authority (SPCMCA) acting on the claim may grant more time.
- c. Generally, a person who is not aware of Article 139 or does not know the identity of the offender has good cause for delay in submitting a claim.

**7. Where does one submit an Article 139 Claim?**

- a. An Article 139 Claim is submitted to the SPCMCA having jurisdiction over the alleged offender.
- b. Any subordinate officer receiving a claim will forward it within 2 working days to the SPCMCA having jurisdiction over the alleged offender.

**8. What is the form of an Article 139 Claim?**

- a. A claim may first be submitted orally. However, it must be then reduced to writing and signed by the claimant.
- b. A claim should be reduced to writing immediately (see figure 10-1 of DA Pam 27-162). An oral claim that is not reduced to writing within 10 calendar days may be dismissed.
- c. The claim must be for a definite amount. An amount stated in a foreign currency must be converted to U.S. dollars.

**9. What initial action must be taken by the SPCMCA when a claim is received?**

- a. When the SPCMCA receives a claim, he or she must appoint an investigating officer to conduct an investigation within 4 working days of receiving a claim (see Encl 1).
- b. The SPCMCA should select an investigating officer who has enough maturity and experience to resolve the issues raised by the claimant.

**10. What action must be taken by the investigating officer?**

- a. Within 10 working days of appointment, the investigating officer will complete an investigation into the claim. The SPCMCA may extend this 10 day period for good cause.
- b. The investigating officer will notify the soldier against whom the claim has been made

c. The investigating officer should contact the claims office for guidance on legal and procedural questions.

d. The investigating officer will submit findings of fact and a recommendation based on those findings to the SPCMCA through the claims office and will provide the soldier against whom the claim is made with a copy of that submission to afford the soldier an opportunity to respond.

e. For information on Evidence, Standard of Proof, Valuation of a claimant's loss, Findings and Recommendations, and claims against more than one soldier, the investigating officer should read DA Pam 27-162, para 10-5.

**11. What are the requirements of the Claims Judge Advocate (CJA) after the investigation is complete?**

a. Within 5 working days, the CJA will review the claim for legal sufficiency. The CJA will provide a written legal opinion as to:

(1) Whether the claim is cognizable under the provisions of Article 139 and this chapter.

(2) Whether the findings and recommendations are supported by evidence.

(3) Whether there has been substantial compliance with the procedural requirements of Article 139, AR 27-20, Chapter 9, and AR 15-6.

b. If the findings and recommendations are not supported by the evidence, the CJA will return the claim to the investigating office for additional findings.

c. A CJA may review the findings and recommendations even if he or she has already given legal or procedural advice to the investigating officer.

d. The CJA will prepare letters to the claimant and to the soldier against whom the claim is made, to be signed by the SPCMCA.

e. If pecuniary liability is recommended and the claim is legally sufficient, the CJA will prepare an action for the SPCMCA's signature, directing the appropriate Finance and Accounting Office to withhold pay from the soldier and give it to the claimant.

**12. What is the final action by the SPCMCA?**

a. The SPCMCA will disapprove the claim or,

b. If the findings and recommendations are legally sufficient, approve it in an amount equal to or less than the amount recommended by the investigating officer.

c. The SPCMCA will notify the claimant and the soldier of this decision and of the right to request reconsideration.

d. The SPCMCA will then withhold final action on the claim for 10 working days pending receipt of a request for reconsideration unless this will result in an injustice, e.g., the discharge of the soldier from active duty.

e. If the SPCMCA approves a claim against a soldier who is subject to his or her jurisdiction, the SPCMCA will direct the appropriate Finance and Accounting Office to withhold pay from that soldier in an amount up to \$5,000.00 per claim and to pay that sum to the claimant.

f. The claim file should be returned to the claims office for disposition.

### **13. What happens to soldiers that are not subject to the SPCMCA's jurisdiction?**

a. For soldiers not subject to the SPCMCA's jurisdiction, the SPCMCA will forward a copy of the claim to the SPCMCA who does exercise jurisdiction.

b. That SPCMCA is bound by the determination made and will direct the appropriate Finance and Accounting Office to withhold pay from that soldier in an amount up to \$5,000.00 and pay it to the claimant.

### **14. What if the assessment is in excess of \$5,000.00?**

a. If the SPCMCA assesses an amount in excess of \$5,000.00 against a soldier on a single claim, he or she will direct that soldier's pay and forward the claim with a recommendation to the Commander, USARCS.

b. The recommendation should state the amount the SPCMCA deems meritorious and not merely state that the amount is "in excess of" \$5,000.00.

### **15. What happens if the claimant or the soldier who has been assessed pecuniary liability requests for reconsideration?**

a. The SPCMCA will direct the CJA to provide a recommendation.

b. If the request raises an issue of fact, the SPCMCA may appoint an investigating officer to make further findings of fact.

c. If the SPCMCA contemplates acting favorably on the request, he or she will provide the other party or parties to the claim with notice and an opportunity to respond.

d. The basis for any change will be noted in the file.

e. Favorable action should not be taken on a request submitted more than 10 working days after the SPCMCA has provided notice of a decision except on the basis of newly discovered evidence, fraud, or obvious error of fact or law.

f. Favorable action may not be taken by a successor in command except on the basis of newly discovered evidence, fraud, or obvious error of fact or law apparent from the file.

**16. In addition to the legal review, what are the responsibilities of the CJA?**

a. After final action on the claim is completed and within 10 working days, or as soon as notice of the finance action taken is received, the CJA will prepare a cover sheet for the claim and forward it, along with a copy of the claim, to the Commander, USARCS, ATTN: JACS-PC.

b. The cover sheet will reference the claimant's name, the offender's name, the convening authority, the amount and date approved or disapproved, and whether an additional assessment by USARCS is recommended.

c. The CJA must also state whether the finance action taken was completed if pecuniary liability was recommended.

d. The CJA will maintain an Article 139 log and monitor time suspenses on pending Article 139 Claims.

e. Timely completion of Article 139 actions is necessary to prevent offenders from being separated from active duty with unresolved claims pending, and the CJA will act to ensure that time suspenses are met.

f. Commanders and military law enforcement personnel have a duty to advise victims of their rights under Article 139. The CJA will ensure that these persons are fully aware of their responsibilities.

**17. What references are available to someone who wants to learn more about Article 139 Claims?**

a. AR 27-20

b. DA Pam 27-162